

Political Advertisements



*Summary of Law and Policies
for*

Political Advertisements in Virginia

Title 24.2, Chapter 9.2 of the *Code of Virginia*

COMMONWEALTH OF VIRGINIA
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Chapter 1 – Introduction

Purpose of *Summary*

§24.2-903 requires the State Board of Elections to prepare and make available a summary of the Campaign Finance Laws in Virginia. To that end, we have assembled this *Summary of Virginia's Campaign Finance Laws and Policies for Political Advertisements in Virginia* (hereafter referred to as “*Summary*”), which outlines the requirements of the Campaign Finance Disclosure Act and related policies.

This document has been prepared to assist the filer in understanding the law and policies set forth by the Code of Virginia governing political advertisements in Virginia. SBE makes this *Summary* available on the Internet to all candidates, their treasurers, to treasurers of political committees and the general public. It is also available upon request. This manual is a basic reference tool, and is **not** a substitute for the actual law (a copy of which is available for purchase or to read on-line on our website: http://www.sbe.virginia.gov/Campaign_Finance/)

General Information

The Virginia State Board of Elections (SBE) provides information and resources to assist candidates and committees in complying with the provisions of the “Stand By Your Ad” Act, Chapter 9.2 of Title 24.2 of the Code of Virginia. The most common mistakes made by those required to comply with the Act involves understanding the importance of properly disclosing the source of the payment for political advertisements and whether or not a candidate for election has authorized the ad. As a person, candidate, treasurer or officer of a committee, you should familiarize yourself with this *Summary* for it will serve as a valuable resource. Of course, the Campaign Finance staff is always available by telephone, facsimile, or e-mail to provide assistance.

State Board of Elections Campaign Finance Staff

SBE staff is available to assist you in preparing reports and interpreting the requirements of the CFDA. Should you have questions or require clarification, contact:

Chris Piper, Administrator, email: chris.piper@sbe.virginia.gov

Tina Edmonds, Compliance Specialist, email: tina.edmonds@sbe.virginia.gov

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Marian Mines, Campaign Committee Specialist, email: marian.mines@sbe.virginia.gov

Related Publications

Candidates and their treasurers should also familiarize themselves with the State Board of Elections’ *Summary of Laws and Policies: Candidates and Their Committees* and *Summary of Laws and Policies: Political Committees* to understand the guidelines governing Campaign Finance Disclosure laws in Virginia.

Elections Not Covered

The provisions of “Stand By Your Ad” do not apply to:

- ⇒ **Any person making an independent expenditure on an advertisement of less than \$1,000 (in the aggregate for a single election cycle); or**
- ⇒ **An individual or referendum committee who incurs an expense with respect to a referendum.**

Federal Candidates and Committees

Any person or committee who wishes to purchase a political advertisement for:

- ⇒ **President of the United States;**
- ⇒ **Vice-President of the United States;**
- ⇒ **United States Senate;**
- ⇒ **United States House of Representatives; or**

Any person or political committee wishing to purchase political advertisements for those federal candidates must contact the Federal Election Commission (FEC) to obtain forms and information pertaining to federal political advertisement laws and policies.

You may contact the FEC at:

- 800-424-9530 (toll-free) or 202-694-1100 (within the Washington, D.C. area)
- www.fec.gov – Internet address
- 999 E. Streets, NW, Washington, DC 20463-0002 – U.S. Mail

Definitions

The following are definitions of terms, as used in this *Summary* that are of principal importance to political advertising. Some definitions are drawn from statutory law and some are drawn from regular meaning in order to provide context, clarity and better understanding. If you wish to read the exact definition as it appears in the statutes, you may refer to the §§ 24.2-101, 24.2-901 and 24.2-904 of the Code of Virginia.

Advertisement – any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under the Campaign Finance Disclosure Act.

Aggregate Contribution – the total amount of contributions made by an individual or other entity during an election cycle.

Candidate – an individual who seeks nomination for election, or election to public office, in the Commonwealth of Virginia, whether or not such individual is elected. An individual will be considered a candidate seeking nomination for election, or re-election if he/she has:

- ⇒ **Personally, or through another person, has solicited or received funds or other things of value, or made expenditures, including expenditures from personal funds, for the purpose of bringing about such individual's nomination or election to any office; or**
- ⇒ **Has been endorsed or nominated by a Political Party and is thus entitled to a position on the ballot at an election or primary (whether or not funds or resources have been solicited, received or expended); or**
- ⇒ **Is otherwise qualified for placement on the ballot pursuant to the election laws (whether or not funds or resources have been solicited, received or expended).**

Candidate's Campaign Committee – the committee designated by a candidate to receive all contributions and make all expenditures for him or on his behalf in connection with his nomination or election. A Candidate's Campaign Committee may only be used to support one candidate.

Candidate's Election Cycle – an election cycle shall be deemed to begin on January 1 of the year that the candidate first seeks election for the office through December 31 immediately following the election for such office. The election cycle provides for the aggregation of contributions and expenditures for the candidate's campaign finance reporting. Solely for the purpose of filing campaign finance reports a candidate with any activity to report in a new election cycle shall be presumed to be a candidate for reelection in the succeeding election.

Conspicuous – so written, displayed, or presented that a reasonable person ought to have noticed it.

Consultation - to take counsel to bring about, devise, contrive, to ask advice of, seek the opinion of, apply to or for information or instruction.

Contribution – money or services of any amount, and any other thing of value, given, advanced, loaned, or in any other way provided to a candidate, campaign committee, political committee, inaugural committee or person for the purpose of influencing the outcome of an election or defraying the costs of the inauguration of a Governor, Lieutenant Governor or Attorney General. "Contribution" includes money, services or things of value in any way provided by a candidate to his own campaign and the payment by the candidate of any primary filing fee.

Coordination – any discussion, action or agreement made by the sponsor of an advertisement and the candidate or any agent of the candidate's campaign committee.

Disclosure Statement – the visual or spoken statement required on political advertisements. It shall not be deemed a violation of this section if the contents of the disclosure statement convey the required information.

Expenditure – money or services of any amount, and any other thing of value, paid, loaned, provided or in any other way disbursed by any candidate, campaign committee, political committee, inaugural committee or person for the purpose of influencing the outcome of an election or for defraying the costs of the inauguration of a Governor, Lieutenant Governor or Attorney General.

Full-screen – the only picture appearing on the television screen during the oral disclosure statement that (i) contains the disclosing person, (ii) occupies all visible space on the television screen, and (iii) contains the image of the disclosing person that occupies at least fifty percent of the vertical height of the television screen.

Independent Expenditure - an expenditure made by any person or political committee that is not made to, controlled by, coordinated with, or made upon consultation with a candidate, his campaign committee, or an agent of the candidate or his campaign committee.

In-Kind Contribution – the donation of goods, services, property or anything else of value that is offered for free or less than the usual and normal charge; or payments by a third party for goods and services rather than money. The basis for arriving at the dollar value of an In-Kind gift is as follows: new items are valued at retail value; used items are valued at fair market value and services rendered are valued at the actual cost of service per hour. Services are not to include personal services (outside of the person's professional occupation) for which no compensation is asked or given.

Occurrence – one broadcast of a radio or television political campaign advertisement in violation of the expanded disclosure requirements for television and radio as required under §24.2-944.

Person – any individual or corporation, partnership, business, labor organization, membership organization, association, cooperative or other like entity.

Political Action Committee (PAC) – any person, association, organization, group of individuals, or other committee (other than a political party committee) which anticipates receiving contributions or making expenditures in whole or in part, for the purpose of influencing the outcome of a Virginia election, during the calendar year in an aggregate amount exceeding \$200. Organizations or auxiliaries associated with or using the name of a political party are considered PACs.

Political Party – an organization of citizens of the Commonwealth, which, at either of the two preceding statewide general elections, received at least ten percent of the total vote cast for any statewide office, filled in that election. The organization shall have a state central committee and an office of elected state chairman, which have been continually in existence for the six months preceding the filing of a nominee for any office.

Political Party Committee – means any state political party committee, congressional district political party committee, county or city political party committee, or organized political party group of elected officials. The term shall not include any other organization or auxiliary associated with or using the name of a political party; those organizations or auxiliaries are considered Political Action Committees.

Print Media – billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, and outdoor advertising facilities. A "mass mailing" is a mailing with more than 500 pieces.

Radio – any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

Referendum Committee – any person, group of persons or committee that makes expenditures in a calendar year in excess of (i) \$10,000 to advocate the passage or defeat of a statewide referendum, (ii) \$5,000 to advocate the passage or defeat of a referendum being held in two or more counties or cities, and (iii) \$1,000 to advocate the passage or defeat of a referendum held in a single county or city. Referendum committees are required to file campaign finance reports according to the same schedule that candidates for that same election.

Scan Line – a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

Sponsor – a candidate, candidate campaign committee, political party committee, political action committee, individual, or other entity that purchases an advertisement.

Television – any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

Unobscured – means that the only printed material that may appear on the television screen is a visual disclosure statement required by law, and that nothing is blocking the view of the disclosing person's face.

Chapter 2 – Basic Requirements of “Stand By Your Ad”

The “*Stand By Your Ad*” law is a section of the Code of Virginia that governs the requirements for political advertisements. This law is made up of two parts: the first part is basic requirements that all advertisements must meet; the second is expanded disclosure requirements for television and radio advertisements.

When Disclosure Statements are Required

A disclosure statement is required for all advertisements. The proper disclosure statement must be used in order to be in compliance with the requirements of the law. The following is a list of the specific items that both require and do not require a disclosure statement:

A Disclosure Statement Required on:

- ⇒ Billboards
- ⇒ Bumper Stickers
- ⇒ Cards
- ⇒ Sample Ballots
- ⇒ Newspaper ads
- ⇒ Newspaper inserts
- ⇒ Magazines
- ⇒ Mass mailings (over 500 pieces)
- ⇒ Pamphlets
- ⇒ Fliers
- ⇒ Periodicals
- ⇒ Palm Cards
- ⇒ Websites
- ⇒ Electronic mail (E-mail)
- ⇒ Outdoor advertising facilities
- ⇒ Television advertisements
- ⇒ Radio advertisements

A Disclosure Statement is Not Required on:

- ⇒ Pens
- ⇒ Pencils
- ⇒ Magnets
- ⇒ Buttons to be attached to wearing apparel
- ⇒ Other such novelty items.

Basic Requirements

“Paid for by [. . .]” Statement

- ⇒ Every advertisement must state who **PAID** for the ad. This is the “sponsor” of the advertisement.
- ⇒ If the sponsor of the advertisement is the candidate the ad supports or that candidate’s campaign, *only* this statement is required.
- ⇒ Advertisements sponsored by a candidate must use either the name of the candidate or the candidate campaign committee.
- ⇒ Advertisements paid for by a candidate may replace “Paid for by...” with “Authorized by...” only if the advertisement does not identify or make reference to the candidate’s opponent.
- ⇒ For Political Parties and PACs, the name that is used in stating who paid for an ad must be the same name that appears on the *Statement of Organization* form that was filed with SBE when the committee was formed.
- ⇒ If a single print media advertisement (excluding websites) consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.

“Authorized by [. . .]” Statement

- ⇒ Candidates or the candidate’s campaign committee, who sponsor an advertisement intended to support their election, are not required to disclose the authorization statement.
- ⇒ The authorization statement is **ONLY** required in a **print media** advertisement and not on Television or Radio. The following condition will require the Authorization statement:
 - If an individual, person or political committee sponsors an advertisement that is clearly intending to “influence the outcome of an election.”

Examples:

“Paid for by . . . (the name of the sponsor) and authorized by (name of candidate), candidate for (name of office being sought)”

OR

“Paid for by . . . (the name of the sponsor) and not authorized by a candidate.”

Independent Expenditures, In-Kind Contributions and the “Authorized by [...]” Statement

The fact that a person or political committee has contacted the campaign committee about an advertisement does not mean that the candidate has “authorized” the advertisement. Therefore, a candidate may discuss an advertisement with a person or political committee; however, unless express consent is given by the candidate, the person or political committee must state that the advertisement is “Not Authorized by Any Candidate.” Should the candidate actively participate in any discussions about the advertisement, whether or not express consent (or “authorization”) is given, the campaign committee must report the cost of the advertisement as an In-Kind Contribution.

Further, the Campaign Finance Division advises candidates, persons and political committees, that in order to support a conclusion that a person or political committee did not “consult” with the candidate on print media advertisements (when someone did in fact “speak” with the candidate or a committee representative, but not “consult”), the candidate or political committee representative is advised that they should indicate the nature of the discussion in a written document of some kind (letter or email). Additionally, this documentation must be maintained in the files of both committees. If a campaign committee or candidate actually consents to any aspect of an advertisement during the discussion then authorization has occurred and the advertisement must state that the candidate authorized the advertisement.

Although neither the “Campaign Finance Disclosure Act” nor the “Stand By Your Ad Act” require that a written document be created, the State Board of Elections recommends it to avoid misunderstandings, document the discussion and create evidence of whether or not the candidate authorized the advertisement.

Statement of Intended Benefit

- ⇒ If a print media advertisement recognizes a candidate the sponsor is opposing, the sponsor must also disclose **WITHIN** the advertisement, the name of the candidate who is intended to benefit from the ad. (This only applies if the sponsor of the ad coordinated or consults with the candidate who is intended to benefit).

In all cases, if an advertisement is jointly sponsored, the disclosure statement must name all of the sponsors.

Examples:
“Paid for by Candidate A, Candidate B, Candidate C.”

Advertisements and the Allocation of In-Kind Contributions

In-kind contributions are required to be reported by the benefiting candidate in the event that a sponsor of a political advertisement intends to benefit multiple candidates. § 24.2-902 places the responsibility for determining the value of the In-Kind contribution on the affected parties. The State Board of Elections has not been granted the authority to determine how In-kind contributions should be allocated. Therefore, the Board cannot issue a direct policy or an interpretation on the proper method to allocate In-Kind Contributions.

SBE does advise candidates, persons and political committees that they may allocate the In-Kind Contributions among multiple candidates in one of two ways:

- ⇒ **Split equally among all candidates who are supported in the advertisement; or**
- ⇒ **Allocate the entire expenditure in the form of an In-Kind Contribution to each candidate because each candidate equally benefits from the political advertisement.**

As always, SBE also advises candidates, persons and political committees to document the determination and agreement of the allocation of the In-Kind Contribution in a written document (letter or email), and to maintain that document in the affected party's records. Although the Code of Virginia does not require such a written document, SBE recommends it as a measure to avoid misunderstandings and create evidence of each party's stated intent.

Requirements for Publications

It is unlawful for any of the entities listed below, to accept or receive or agree to accept or receive any money or other valuable consideration for supporting or advocating the election or defeat of any candidate.

- ⇒ Owner,
- ⇒ Clerk,
- ⇒ Proprietor,
- ⇒ Agent,
- ⇒ Officer,
- ⇒ Editor,
- ⇒ Reporter,
- ⇒ Manager, or
- ⇒ Employee of any newspaper, magazine, or periodical printed or published in Virginia.

This section does not prevent any person, firm or corporation that is engaged in the publication of any newspaper, magazine or periodical from receiving from any person compensation for printing and publishing any matter or article that advocates the election or defeat of any candidate, as long as the statement **"PAID ADVERTISEMENT"**, appears in plain type in boldface Roman capitals in a conspicuous place at the beginning of the matter or article; and the matter or article otherwise complies with the provisions of §24.2-1014 of the Code of Virginia.

The person accepting a **“PAID ADVERTISEMENT”** for the newspaper, magazine or periodical shall require and for one year, retain a copy of, proof of the identity of the person who submits the advertisement for publication when the authorization statement on the advertisement is made by any person other than the:

- ⇒ Candidate;
- ⇒ Candidate's Campaign Committee;
- ⇒ Political Party Committee; or
- ⇒ Political Action Committee (PAC) registered with the SBE.

This proof of identity must be submitted either:

- ⇒ In person and include a valid VA driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or
- ⇒ If other than in person, the person submitting the advertisement must provide a telephone number and the person accepting the advertisement may phone the person to verify the validity of the person's identifying information before publishing the advertisement.

Chapter 3 - Expanded Disclosure Requirements for Television and Radio

Expanded Media Rules

There are additional requirements for **television** and **radio** advertisements beyond the basic requirements.

- ⇒ The sponsor must also include a spoken disclosure statement. Examples of the spoken disclosure statement are:

Spoken Disclaimers		
Sponsor	Television	Radio
Candidate or Campaign Committee <small>*A candidate's spoken disclosure statement is not required if the advertisement does not identify or make reference to an opposing candidate for the same office as the sponsoring candidate.</small>	"I am (or 'This is . . .') [name of candidate], candidate for [name of office] and I (or 'my campaign') sponsored this ad."	"I am (or 'This is . . .') [name of candidate], candidate for [name of office] and this ad was paid for (or 'sponsored by' or 'furnished by') [name of candidate or campaign committee that paid for the ad]."
Political Party Committee	"The [name of political party committee] sponsored this ad."	"This ad was paid for (or 'sponsored by' or 'furnished by') [name of political party committee, which shall include the name of the political party]."
Political Action Committee	"The [name of political action committee as it appears on its Statement of Organization] sponsored this ad."	"This ad was paid for (or 'sponsored by' or 'furnished by') [name of political action committee as it appears on its Statement of Organization]."
Individual	"I am [individual's name] and I sponsored this ad."	"I am [individual's name] paid for ('sponsored' or 'furnished') this ad."
Other sponsorⁱ	"[name of sponsor] sponsored this ad."	"[name of sponsor] paid for ('sponsored' or 'furnished') this ad."

Jointly Sponsored Television and Radio Advertisements

- ⇒ If an advertisement is jointly sponsored the disclosing individual must be one of those sponsors:
- ⇒ If a candidate is one of those sponsors, the candidate must be the disclosing individual.
- ⇒ If more than one candidate is the sponsor of a jointly sponsored advertisement, at least one of the candidates must be the disclosing individual.

Summary of Television Rules

- ⇒ Visual disclosure statement must be 20 scan lines.
- ⇒ An unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of that individual on camera, must be featured throughout the entire disclosure statement.
- ⇒ The disclosure statement can be made at any point, unless the ad is more than 5 minutes, in which case the statement must be made at both the beginning and at the end of the ad. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. § 315 and 317, administered by the Federal Communications Commission.
- ⇒ A television advertisement where the sponsor does not have the option of controlling the audio then the visual disclosure statement will be sufficient (e.g. slide advertisements on local cable access channels).
- ⇒ A television advertisement sponsored by a candidate or the candidate's campaign committee must also include a spoken disclosure statement **ONLY** when the ad mentions the name, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

Summary of Radio Rules

- ⇒ Disclosure statement must last 2 seconds long.
- ⇒ The candidate must also include a spoken disclosure statement when the ad mentions the name, shows the picture, transmits the voice, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.
- ⇒ Political party or PAC ads must include a disclosure statement spoken by the chair, executive director or treasurer of that organization.
- ⇒ In its oral disclosure statement, a political party committee, PAC, individual or other non-candidate sponsor may choose to identify the advertisement as either supporting or opposing any candidates clearly identified in the ad.
- ⇒ For ads on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. § 315 and 317, administered by the Federal Communications Commission.
- ⇒ A radio advertisement sponsored by a candidate or the candidate's campaign committee must also include a spoken disclosure statement **ONLY** when the ad mentions the name, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

Chapter 3 - Campaign Telephone Calls

Requirements

Campaign telephone calls is a series of telephone calls, electronic or otherwise, made to twenty-five or more telephone numbers in the Commonwealth during the 180 days before a general or special election or during the ninety days before a primary, conveying or soliciting information relating to any candidate or political party participating in the election or primary, and under an agreement to compensate the telephone callers.

It is unlawful for any person to make campaign telephone calls without disclosing before the conclusion of each telephone call, information to identify the person who has authorized and is paying for the calls unless such call is terminated prematurely by means beyond the maker's control. The person making the campaign telephone calls must disclose the following identifying information:

- ⇒ The name of candidate if the calls are authorized by the candidate or his campaign committee;
- ⇒ The name of political party committee if the calls are authorized by that committee or an agent of that committee; or
- ⇒ The name of committee and committee's registration number if the writing is authorized by a political committee registered with the SBE, or
- ⇒ The full name and home addressⁱⁱ of the person responsible if the writing is authorized by any person other than a candidate, his campaign committee, a political party committee or a committee registered with the SBE.
- ⇒ It is unlawful for any person who contracts for campaign telephone calls to fail to provide to the persons making the telephone call the identifying information required by §24.2-1014.1.
- ⇒ It is unlawful for any person to provide a false or fictitious name or address when providing the identifying information required under this section.

Chapter 4 - Violations/Enforcement

The State Board of Elections has determined that violations to the political advertisements should be considered in a cumulative fashion and that the penalties should be assessed based on the number of violations from the same committee within an election cycle.

Violations

The person alleging any violation to print media, radio or television advertisements should contact the State Board if the committee is a Political Committee, Political Party Committee or Candidate for the General Assembly or Statewide office. All other complaints should be forwarded to the local electoral board in the county or city in which the violation is believed to have occurred. Once the complaint is received, the Board has the authority to determine if a violation has occurred and assess the appropriate penalty or they can inform the complainant to forward the matter to the localities' Commonwealth's Attorney who has the authority to investigate the matter further.

Penalties

Violations for Print Media Advertisements

\$100 – 1st Violation by a committee in an election cycle.

\$100 – Subsequent violations in an election cycle.

Violations for Radio Advertisements

\$125 per occurrence not to exceed \$5,000 – 1st Violation by a committee in an election cycle.

\$250 per occurrence not to exceed \$5,000 – Subsequent violations in an election cycle.

Violations for TV Advertisements

\$250 per occurrence not to exceed \$5,000 – 1st Violation by a committee in an election cycle.

\$500 per occurrence not to exceed \$5,000 – Subsequent violations in an election cycle.

Procedures to Collect Penalties Assessed

- 1) The State Board or local electoral board must notify the committee in violation via certified mail.
- 2) The State Board or the local electoral board shall notify the Commonwealth's Attorney within 90 days of the deadline if the payment of the penalty has not yet been received. The Commonwealth's Attorney shall then initiate civil proceedings collect the civil penalties.
 - a. For political committees, the State Board shall notify the Commonwealth's Attorney for Richmond, unless the committee's officers are residents of a single county or city; then, the State Board shall notify the Commonwealth's Attorney for that county or city.
 - b. For candidates for the General Assembly, the State Board shall notify the Commonwealth's Attorney of the county or city of the residence of the candidate in violation.
 - c. For candidates for statewide office, the State Board shall notify the Commonwealth's Attorney for the City of Richmond.
 - d. The local electoral board of a county or city shall notify the Commonwealth's Attorney for the county or city in which the electoral board has jurisdiction.
- 3) All payments for penalties in violation of political advertisements shall be paid to the "Treasurer of Virginia" for deposit to the General Fund.

Penalties for Campaign Calls

Violations

The person alleging any violation should report the alleged violation to the Commonwealth's Attorney in the county or city in which the violation is believed to have occurred. SBE has no authority to investigate these allegations.

Penalties

Any person who fails to obey any provisions of the laws governing Campaign Telephone Calls may be deemed guilty of a Class 1 misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not more than \$2,500.
